

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY** 2006 MAR 10 AM 9:30
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
BP America Production Company)
BP America, Inc.)
Produced Water Disposal Facility)
Wamsutter, Wyoming 82336)
)
EPA ID No. WYR000202994)
)
Respondents.)
_____)

ADMINISTRATIVE ORDER
PURSUANT TO SECTION 7003
OF RCRA

DOCKET NO.: RCRA-08-2006-0003

I. JURISDICTION

The United States Environmental Protection Agency Region 8 ("EPA") issues this order ("Order") pursuant to its authority under section 7003(a) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, et seq. ("RCRA"), 42 U.S.C. § 6973(a).

II. INTRODUCTION

- A. BP America Production Company and BP America, Inc., are Delaware corporations (collectively, "BP" or "Respondents") and are "persons" within the meaning of section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- B. Respondents, individually or collectively, handle and in the past have handled "solid waste" within the meaning of section 1004(27) of RCRA, 42 U.S.C. § 6903(27) at their oil and gas field waste and produced water disposal facility located south of Wamsutter, in Sweetwater County, Wyoming (the "Facility").
- C. Based upon evidence received, EPA has determined that Respondents' handling of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.
- D. Pursuant to Section 7003(a) of RCRA, on March 10, 2006, EPA issued notice of this action to Mr. John Wagner, Director of the Water Quality Division, Wyoming Department of Environmental Quality ("WDEQ"). Pursuant to Section 7003(c) of RCRA, on March 10, 2006, EPA issued notice of this action to Mr. Chuck Sykes, Director of Environmental Health, Sweetwater County Health Department.

- E. Documents comprising the administrative record for this Order are referred to herein as "AR- #." An index to the administrative record is provided as Attachment 1 to this Order. This Order is based on information contained in the entire administrative record in this matter; references to specific documents in the record are intended for purposes of convenience only.
- F. EPA takes this action pursuant to Section 7003 of RCRA having determined that the issuance of this Order is necessary to protect public health or the environment.

III. PARTIES BOUND

- A. This Order shall apply to and be binding upon Respondents, their employees, agents, successors and assigns.
- B. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within five (5) calendar days of the date of Respondents' receipt of this Order or date of such retention, and shall condition all such contracts on compliance with terms of this Order.
- C. Respondents shall give notice to EPA thirty (30) or more calendar days prior to transfer of ownership or operation of the Facility.

IV. FINDINGS OF FACT

- A. The Facility is located approximately in Section 13, T19N, R94W, Sweetwater County, Wyoming, at latitude 41° 37' 36.5" N / 107° 56' 46.8" W, in a remote, rural area about four (4) miles south of Wamsutter, Wyoming. (AR-1, AR-2, AR-3)
- B. The Facility is owned by BP America, Inc., or BP America Production Company.
- C. The Facility is operated by BP America, Inc., or BP America Production Company.
- D. The Facility began operating as an oil and gas field waste disposal facility on or about November 17, 1997, following the issuance of WDEQ Permit to Construct # 97-134R, on May 12, 1997 (AR-25). An additional Permit to Construct # 98-063 was subsequently issued by WDEQ on April 2, 1998. (AR-25)
- E. The Facility comprises, in part, two, approximately 410' by 560' and 7' (deep) lined evaporation ponds, a tank battery, two truck offloading stations, two proximate UIC wells and other miscellaneous facility-related equipment (e.g., piping, sumps, etc.). (AR-2, AR-3)

- F. Oil and gas exploration and production waste and waste water ("E & P waste") is trucked to the Facility from various private oil and gas production facilities and is transferred into the tank battery. Oil and water separation occurs within the tanks, and the waste water is discharged into the evaporation ponds. Recovered oil is moved into the product oil storage tanks.
- G. According to the United States Fish and Wildlife Service (USFWS), the following "Level I" migratory bird species may be found in the Sweetwater County sagebrush/greasewood habitat in which the Facility is generally situated: Baird's sparrow, bald eagle, Brewer's sparrow, burrowing owl, ferruginous hawk, long-billed curlew, McCown's longspur, mountain plover, peregrine falcon, sage grouse, sage sparrow, short-eared owl, Swainson's hawk and the upland sandpiper. Level I species are species the USFWS has determined need conservation action at this time. The following "Level II" species may also be found in this habitat: bobolink, chestnut-collared longspur, dickcissel, grasshopper sparrow, lark bunting, lark sparrow, loggerhead shrike, sage thrasher, Sprague's pipit and the vesper sparrow. Level II species are species that receive heightened monitoring. The bald eagle, found throughout the State of Wyoming, is a threatened species. (AR-24)
- H. In late 1996, EPA Region 8 and USFWS Region 6 formed a partnership (EPA/USFWS Team) to explore methods to comprehensively address threats to human health or the environment posed by improperly designed or operated facilities that manage E & P waste.
- I. EPA's focus on the EPA/USFWS Team described above is to ensure that all owners and operators of facilities managing E&P waste do so in compliance with all laws USEPA has responsibility for implementing, including RCRA, and in a manner that is protective of human health and the environment. The USFWS focus in this Team effort is to implement the Migratory Bird Treaty Act and the Endangered Species Act.
- J. On September 20, 2004, an explosion occurred in the Facility's tank battery. As a matter of safety, all power at the Facility was shut down for an extended period of time, including power to the Facility's acoustical bird deterrent system. (AR-2, AR-3, AR-7, AR-10)
- K. On or about October 8, 2004, while the acoustical bird deterrent system was inoperative, a number of different migratory bird species took refuge in the Facility's evaporation ponds. (AR-2, AR-3, AR-7 and AR-10)
- L. On or shortly after October 8, 2004, BP employees recovered fifty-three (53) migratory bird mortalities from the Facility's evaporation pond(s) and reported the incident to Kathleen Erwin (USFWS). Ms. Erwin subsequently contacted Special Agent Roy Brown (USFWS) about the incident. These mortalities (dead birds) were later identified by USFWS personnel as forty-two (42) teal, six (6) grebes, two (2) coots, one (1) phalarope, one (1) shoveler and one (1) widgeon. (AR-1, AR-3, AR-7)

- M. On November 9, 2004, USEPA and USFWS representatives conducted an inspection at the Facility. After taking a field tour of the Facility with BP representatives, USEPA and USFWS representatives concluded that, at that time, the remaining or ongoing environmental threat to migratory birds or other wildlife was limited to a small amount of floating, oily debris in the northeast corner of the west evaporation pond. (AR-2)
- N. On December 12, 2004, in order to facilitate the issuance of a Resource Conservation and Recovery Act (RCRA) EPA identification number for the Facility for RCRAInfo database tracking purposes, Randy Lamdin, Environmental Protection Specialist, EPA, completed a EPA Notification of Regulated Waste Activity form (EPA Form 8700-12). The Facility was subsequently issued EPA identification number WYR000202994. (AR-9)
- O. On several occasions during September-November 2005, BP representatives reported to USFWS, five (5) additional incidents of migratory bird mortalities found in the Facility's evaporation pond(s). These incidents, which resulted in a total of sixty-two (62) additional migratory bird mortalities, occurred on or about September 12 and 26-27, 2005, October 12 and 25, 2005 and November 12, 2005. (AR-15, AR-21, AR-28)
- P. On or about November 3, 2005, Pete Ramirez, USFWS, reported the USFWS's retrieval of fifty-six (56) duck mortalities, primarily teal (45), from four (4) incidents that occurred at the Facility during September and October 2005, and indicated that some (total 10) of those mortalities were being sent to the National Wildlife Health Center (5) and the Wyoming State Laboratory (5) for necropsies. (AR-15)
- Q. On or about November 3, 2005, Jack Engstrom, representative of BP, stated to Pete Ramirez, USFWS, that the oil in the Facility's evaporation ponds comes from oil present in the produced water, which, in turn, is derived from natural gas well operation. Mr. Ramirez subsequently concluded that the Facility was having problems keeping oil out of the evaporation ponds and that the acoustical deterrent was not effective at preventing or limiting birds from landing in the ponds. (AR-16)
- R. During the time periods relevant to the above-described bird mortalities, evaporation pond waters at the Facility contained elevated sodium levels, paraffin and other oily substances from facility operations. (AR-5, AR-10, AR-21)
- S. On or about December 19, 2005, by memorandum from Special Agent Roy Brown (USFWS) to Jerry Austin (BP), the USFWS notified Respondent of the USFWS Office of Law Enforcement's policy and procedures regarding the "takings" of migratory birds under the Migratory Bird Treaty Act (MBTA). (AR-20)

- T. Recovered bird mortalities were coated with paraffin-like substances and oil. (AR-5, AR-7, AR-10, AR-27)
- U. On or about December 23, 2005, brain sodium concentrations for the five (5) mortalities sent to the National Wildlife Health Center, as described above, were provided to USFWS and showed elevated sodium levels (in ppm) for all five (5) birds. (AR-22, AR-23)
- V. Migratory bird deaths (115 total) at the Facility, as described above, are attributable to a combination of 1) hyper-saline conditions from evaporation of produced water, resulting in acute sodium toxicosis in brain tissue; and 2) direct contact with and/or ingestion of oil in the produced water which adheres to a bird's feathers and causes them to lose their insulating and thermoregulatory capability, resulting in hypothermia and death. (AR-12, AR-13, AR-18, AR-19, AR-21, AR-22, AR-23, AR-27)

V. CONCLUSIONS OF LAW

- A. Respondents are each "persons" within the meaning of section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
- B. Wastes received by, and handled at, the Facility are "solid waste[s]" as defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
- C. Respondents individually or collectively have contributed or are contributing to the handling, storage, treatment, transportation or disposal of solid waste at the Facility within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.
- D. Respondents' individual or collective handling of solid waste at the Facility may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003 of RCRA.

VI. ORDER

Based on the above, and on other information contained in the administrative record for this Order, EPA has determined that the activities required by this Order are necessary to protect public health or the environment. EPA, therefore, hereby orders Respondents to perform the work specified in this Order in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with this Order, including all documents incorporated herein pursuant to this Order, and all applicable laws.

VII. WORK TO BE PERFORMED

A. CORRECTIVE MEASURES

1.
 - a. Because the spring bird migration begins in April, Respondents shall have completed all work hereunder no later than twenty-one (21) calendar days of EPA approval of the CMWP.
 - b. Within seven (7) days of receipt of this Order, Respondent shall post notice of the endangerment described herein at the Facility.
2. Within twenty-one (21) calendar days of receipt of this Order, Respondents shall evaluate all corrective measures necessary at the Facility to protect wildlife, including migratory birds and endangered and threatened species, develop a Corrective Measures Work Plan (CMWP), and submit such CMWP to EPA for approval. The CMWP shall describe:
 - a. the selected corrective measures;
 - b. an operations and maintenance plan which will result in uninterrupted effectiveness of the chosen corrective measures; and
 - c. the names and qualifications of the personnel and contractor(s) to be used in carrying out the work required by this Order. The CMWP shall demonstrate that the personnel and contractor(s) possess all appropriate qualifications.
3. The corrective measures shall include at a minimum, but not be limited to:
 - a. methods for permanently and continuously eliminating contact by wildlife with any oil at or on the surface of the skim pit, the upper or lower ponds, and throughout the Facility;
 - b. remediation of oily pond banks and other ground surfaces; and
 - c. cleaning up and properly disposing of any oil-stained/oil-contaminated soils and other wastes generated at the Facility.
4. The CMWP shall specify that the corrective measures set forth in Section VII. A.1-3. above shall be implemented within twenty-one (21) calendar days of EPA approval of the CMWP.

5. EPA will notify Respondents in writing of any comments it may have on the CMWP which shall be incorporated into the CMWP by Respondents before re-submittal for EPA review.
6. Respondents shall incorporate EPA's comments into the CMWP and resubmit the CMWP to EPA within seven (7) calendar days of receipt of EPA's comments.
7. Upon receipt of the CMWP with EPA comments incorporated, EPA will notify Respondents in writing of its approval, approval with modifications or disapproval of the CMWP. If approved with modifications, the EPA notification correspondence will serve as an addendum to the final CMWP and will be considered part of the approved CMWP.
8. Upon receipt of EPA's written approval or approval with modifications, Respondents shall implement the corrective measures in accordance with the procedures and schedules contained in the CMWP as approved by EPA.
9. If EPA concludes it must disapprove the CMWP after Respondents have had the opportunity to incorporate EPA's comments, EPA may choose to draft a CMWP which EPA will transmit to CMWP as the approved CMWP. EPA may also choose to request that a court order Respondents to take action as is necessary to protect health or the environment at the Facility.
10. Within fifteen (15) calendar days of completing the work as set forth in the CMWP as approved by EPA, not including ongoing operation and maintenance requirements, Respondents shall provide a written Corrective Measures Summary Report ("CMSR") to EPA detailing the completion of the activities conducted pursuant to the CMWP, including confirmation through photographic evidence. The CMSR, with photographs, shall demonstrate the adequate installation, coverage and integrity of the corrective measures implemented.
11. EPA shall notify Respondents as soon as possible after receipt of the CMSR whether the CMSR is accepted and all work, except ongoing operations and maintenance work, is completed under this Order.

B. EMERGENCY ACTION

1. In the event either Respondent identifies a threat to human health or the environment at the Facility at any time during implementation of this Order which warrants more immediate action than pursuant to any requirement of this Order, Respondents shall orally notify the EPA Project Manager identified below not more than twenty-four (24)

hours after discovery and notify EPA, USFWS, and WDEQ in writing not more than ten (10) days after such discovery, summarizing the nature, immediacy and magnitude of such threat(s). Threats to the environment shall include the discovery of any mortality of, or injury to, any animal subject to the Endangered Species Act or the Migratory Bird Treaty Act at the Facility.

2. Proper notification, as required in this section, does not relieve Respondents of any other notification responsibility Respondents may have under any other law, including, but not limited to, Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, or Section 304 of the Emergency Planning and Community Right to Know Act, as amended.
3. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize and require Respondents to take actions to abate the threat(s).
4. If EPA, USFWS, or WDEQ identifies such a threat at the Facility at any time during implementation of this Order, EPA will notify Respondents orally, and provide subsequent notification in writing. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize and require Respondents to take actions to abate the threat.
5. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Order by reference and are immediately enforceable, unless EPA does not provide to Respondents in writing, a description of such requirements within ten (10) calendar days of oral notification.

C. ADDITIONAL WORK

If EPA determines that additional work is necessary, EPA will inform Respondents of such additional requirements in writing, including a written justification for requiring the specified additional work and Respondents shall conduct such work according to EPA direction.

D. PUBLIC PARTICIPATION

EPA may make any work plan or other document available to the public for review and comment for an appropriate period prior to taking final action on such document.

E. REPORTING

1. Commencing the first full month after the effective date of this Order, Respondents shall provide EPA, USFWS, and WDEQ with monthly progress reports which shall include, at a minimum, the following information:
 - a. activities conducted at the Facility in the previous month;
 - b. summaries of problems encountered during the previous month and how the problems were or are being addressed;
 - c. changes in work performed at the Facility from that projected in the previous monthly progress report; and
 - d. projected work for the next reporting period.
2. These progress reports are to be submitted by the tenth calendar day of the month following the monthly reporting period.
3. This reporting requirement concludes during the calendar month Respondents receive EPA's acceptance of the CMSR pursuant to paragraph VII.A.10 above.

F. CERTIFICATION

1. Any notice, report, certification, data presentation, or other document submitted by a Respondent pursuant to this Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondents' compliance or noncompliance with any requirement of this Order shall be certified by a duly authorized representative of that Respondent. A person is a "duly authorized representative" only if: (1) the authorization is made in writing; (2) the authorization specifies either an individual or position having responsibility for overall operation of the Facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (3) the written authorization is submitted to the EPA Project Manager designated below.
2. The certification shall be in the following form:

I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete. As to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of

submission] and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature : _____

Name : _____

Title : _____

VIII. ACCESS

Respondents shall permit full access to EPA, USFWS, WDEQ, and the County, and their authorized representatives, as may be necessary for the purposes of oversight of and implementation of this Order.

IX. GENERAL PROVISIONS

- A. All plans and documents submitted under any section of this Order shall, upon approval by EPA, be incorporated by reference into this Order as if set forth fully herein.
- B. Respondents shall obtain any permits or approvals which are necessary to perform work on or outside the Facility under applicable law and shall submit timely applications and requests for any such permits and approvals.
- C. Respondents shall employ sound scientific, engineering, and construction practices and principles under this Order.

X. AVAILABILITY AND RETENTION OF INFORMATION

- A. Respondents shall make available to EPA, and shall retain, during the pendency of this Order and for a period of five (5) years after its termination, all records and documents in its possession, custody, or control, or in the possession, custody or control of their contractors and subcontractors, which relate to the performance of this Order, including but not limited to documents reflecting the results of any sampling, tests, or other data or information generated or acquired by Respondents, or on Respondents' behalf, with respect to the implementation of this Order.

- B. After the document retention period, Respondents shall notify EPA at least ninety (90) calendar days prior to the destruction of any such documents and, upon request by EPA, shall deliver the documents to EPA.

XI. CONFIDENTIALITY CLAIMS

Respondents may assert confidentiality claims pursuant to 40 C.F.R. Part 2. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to the EPA, the public may be given access to such information without further notice to Respondents.

XII. AVAILABILITY OF ADMINISTRATIVE RECORD

The administrative record supporting this Order shall be available for public review at the RCRA File Room, EPA Region 8, 999 18th Street, Denver, Colorado from 8 a.m. to 5 p.m., every Federal business day.

XIII. NOTICES, CONTACTS, AND EPA PROJECT MANAGER

Whenever under the terms of this Order, notice is required to be given, and/or a report or other document is required to be forwarded by one party to another, such correspondence shall be sent by certified mail or hand carried to the following individuals at the addresses specified below. The following EPA person is designated as the Project Manager for EPA for this Order.

Mr. Randy Lamdin
EPA Region VIII, 8ENF-RC
999 18th Street, Suite 300
Denver, Colorado 80202-2466
(303) 312-6350

As to USFWS:

Mr. Pedro Ramirez, Jr.
Ecological Services
Wyoming Field Office
U.S. Fish & Wildlife Service
5353 Yellowstone Rd., Suite 308
Cheyenne, WY 82001
(307) 772-2374 ext. 36

As to WDEQ:

Mr. John Wagner, Administrator
Water Quality Division
Wyoming Department of Environmental
Quality
Herschler Building, 4th Floor West
122 West 25th Street
Cheyenne, Wyoming 82002
(307) 777-7781

If the date for submission of any item or notification required by this Order falls upon a weekend or state or Federal holiday, the time period for submission of that item or notification is extended to the next Federal working day following the weekend or holiday.

XIV. RESERVATION OF RIGHTS

- A. Nothing in this Order shall limit the information gathering, access, and response authority of the United States under any other applicable law, nor shall it limit the authority of EPA to issue additional orders to either or both Respondents as may be necessary.
- B. This Order shall not be construed as a waiver or limitation of any rights, remedies, powers or authorities which EPA has under RCRA, CERCLA, or any other applicable law.
- C. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, which may pertain to either or both Respondents failure to comply with any applicable laws and regulations and with any of the requirements of this Order, including but not limited to, the right to disapprove of work performed by Respondents, to request that Respondents perform additional tasks, and the right to perform any portion of the work herein.
- D. Compliance by Respondents with the terms of this Order shall not relieve either Respondent of its obligation to comply with RCRA and/or any other applicable State, Federal, or other law, regulation, permit, or other requirement.

XV. FAILURE TO COMPLY

Pursuant to Section 7003(b) of RCRA and 40 C.F.R. Part 19, any failure by Respondents to comply with this Order shall subject Respondents to civil penalties of not more than \$6,500.00 for each day of each failure to comply with this Order. *See also*, Federal Register notice dated February 13, 2004 (69 Fed. Reg. 7121, at 7126).

XVI. OPPORTUNITY TO CONFER, AND MODIFICATION

- A. Respondents have the opportunity to confer informally with EPA concerning the terms and applicability of this Order. If Respondents desire a conference, Respondents must contact EPA Attorney James Stearns by telephone, at 303-312-6912, to schedule such a conference within five (5) calendar days of receipt of this Order by Respondents and follow up this request in writing immediately thereafter.
- B. Any conference held is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to

seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative.

- C. If EPA determines that any element of this Order, including work to be performed or schedules, warrants modification after a conference is held, EPA will modify the order in writing, file the modification with the Regional Hearing Clerk and issue a copy to Respondents.
- D. Except as otherwise provided in this Order, no modification to this Order shall be effective unless and until it is issued in writing by EPA and filed with the Regional Hearing Clerk.

XVII. NOTICE OF INTENT TO COMPLY

- A. Within five (5) days from receipt of this Order, or within twenty-four (24) hours from the date Respondents confer with EPA pursuant to the above section of the Order, Respondents shall provide written notice to EPA's Attorney, as named above, at US Environmental Protection Agency, Region 8, Mail Code ENF-L, 999 18th Street, Denver, CO 80202, stating whether Respondents will comply with the terms of this Order. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be acceptance of any assertions that Respondents may make in its notice, and shall not affect Respondents' obligation to implement this Order.
- B. Failure of Respondents to provide notification to EPA's Attorney of intent to comply within this time period is a violation of this Order.

XVIII. NOTICE OF NON-LIABILITY OF EPA

EPA shall not be deemed a party to any contract involving Respondents and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or the omission of Respondents, their employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

XIX. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision to other parties or circumstances and the remainder of this Order shall not be affected thereby and shall remain in full force.

XX. EFFECTIVE DATE

- A. This Order shall become effective ten (10) days after the date this Order is filed with the Regional Hearing Clerk and mailed to Respondents, unless an informal conference is held. If such a conference is held, this Order becomes effective on the date of receipt by Respondents of EPA's decision on whether to modify the Order.
- B. Subsequent modifications made by EPA to this Order are effective on the date such modification is filed with the Regional Hearing Clerk, so long as Respondents are sent a copy by certified mail or are hand-delivered a copy of the modification as expeditiously as possible after the modification is filed with the Regional Hearing Clerk.

XXI. TERMINATION AND SATISFACTION

The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. This notice, however, shall not terminate Respondents' continuing obligations hereunder, including, but not limited to: record retention, reservations of rights, other claims, other applicable laws, and notice of non-liability of EPA.

IT IS SO ORDERED:

ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Date: 3/10/06

By: Sharon E. Kercher
Sharon E. Kercher, Director
Technical Enforcement Program

Date: 3/9/06

By: Michael T. Risner
Michael T. Risner, Director
Legal Enforcement Program

ATTACHMENT 1

Administrative Record Index

to

Administrative Order Pursuant to Section 7003 of RCRA Issued to BP

1. Email from Kirk Steinle (BP) to Kathleen Erwin (USFWS), dated October 8, 2004.
2. Relevant portions of field trip report, conducted on November 9, 2004, by Randy Lamdin (USEPA) at BP's South Evaporation Basin Facility (Wamsutter), signed/dated January 13, 2005.
3. Field Inspection Report by Pete Ramirez (USFWS), with photographs, conducted on November 9, 2004, at BP's South Evaporation Basin Facility near Wamsutter, Wyoming.
4. Transfer of Evidence (Chain of Custody) from Roy Brown (USFWS) to Pete Ramirez (USFWS), dated 9, 2004, for ten (10) teal and three (3) grebes (migratory bird mortalities to be sent to USGS National Wildlife Health Center (Madison, Wisconsin ... 5 teal/2 grebes) and Wyoming State Veterinary Laboratory (Laramie, Wyoming .. 5 teal/1 grebe) for necropsies.
5. Completed Wyoming State Veterinary Laboratory Accession Forms (5) and Evidence Transmittal Record and Examination Requests (2) for five (5) teal and one (1) grebe, dated November 9, 2004.
6. BP - South Evaporation Facility (Wamsutter) water quality analytical data as provided to Pete Ramirez (USFWS) by Gary Austin (BP) via an email exchange dated November 11-12, 2004.
7. * USFWS Office of Law Enforcement, Report of Investigation, Report # 2004606059/ R-1 (Case # 2004606059), by Special Agent Roy Brown (USFWS), dated November 30, 2004.
8. Wyoming State Veterinary Laboratory facsimile providing virology results on Teal #5, dated December 8, 2004.
9. USEPA Notification of Regulated Waste Activity Form (8700-12), as completed by Randy Lamdin (USEPA) on December 12, 2004, to facilitate assignment of USEPA identification number (WYR000202994) for BP - South Evaporation Facility site.
10. USGS National Wildlife Health Center, Specimen History Form, as completed by Pete Ramirez (USFWS) on December 13, 2004, as a precursor to shipment of specimens (5 teal/2

grebes) from the October 8, 2004, BP - South Evaporation Facility (Wamsutter) bird mortality incident.

11. Wyoming State Veterinary Laboratory facsimile providing virology results on Teal #3, dated December 14, 2004.
12. USGS National Wildlife Health Center, Diagnostic Services Case Report (Case # 19294 necropsy report), dated January 26, 2005.
13. * USFWS Office of Law Enforcement, Report of Investigation, Report # 2004606059/ R-2 (Case # 2004606059), by Special Agent Roy Brown (USFWS), dated March 18, 2005, with attachments.
14. Email, from Pete Ramirez (USFWS) to Randy Lamdin (USEPA) regarding additional BP - South Evaporation Facility bird mortalities (54), dated November 1, 2005.
15. Email, from Pete Ramirez to Randy Lamdin regarding specifics about multiple BP - South Evaporation Facility bird mortality incidents (4), dated November 3, 2005.
16. Email, from Pete Ramirez to Randy Lamdin regarding BP - South Evaporation Facility environmental/site related issues as discussed with Jack Engstrom (BP), dated November 3, 2005, with a July 2005, BP water quality analytical data facsimile attached.
17. USFWS Chain of Custody Record for bird carcasses/mortalities (5) shipped by Pete Ramirez (USFWS) to USGS National Wildlife Health Center, dated November 7, 2005.
18. Wyoming State Veterinary Laboratory Supplemental Final Reports (necropsy reports), dated November 18, 2005, for bird carcasses/mortalities (6) submitted by Pete Ramirez (USFWS) on November 9, 2004.
19. Wyoming State Veterinary Laboratory Preliminary Reports (4)/Final Report (1) (necropsy reports), dated November 30, 2005, for bird carcasses/mortalities (5) submitted by Pete Ramirez (USFWS) on November 2, 2005.
20. USFWS Office of Law Enforcement, letter/memorandum from Special Agent Roy Brown (USFWS) to Jerry Austin (BP), dated December 19, 2005, notifying BP of violation(s) of the Migratory Bird Treaty Act for the "takings" of migratory birds in September-November 2005.

21. * USFWS Office of Law Enforcement, Report of Investigation, Report # 2005604920/R-1 (Case # 2004606059), by Special Agent Roy Brown (USFWS), dated December 19, 2005, with attachments.
22. Email, dated December 23, 2005, from Rex Sohn (USGS) to Pete Ramirez (USFWS) regarding USGS National Wildlife Health Center chemistry laboratory reports on the brain sodium concentrations on the five (5) ducks submitted on November 7, 2005,.
23. Email, from Pete Ramirez (USFWS) to Roy Brown (USFWS) regarding USGS National Wildlife Health Center chemistry laboratory reports on the brain sodium concentrations (elevated) on the five (5) ducks submitted on November 7, 2005, dated December 23, 2005.
24. Email, from Pete Ramirez (USFWS) to Randy Lamdin (USEPA) regarding the Level I species (conservation action) and Level II species (monitoring) found in the sagebrush/greasewood habitat of Sweetwater County, Wyoming, including area of BP - South Evaporation Facility, dated January 4, 2006.
25. Facsimile from Doyle Conklin (WDEQ) to Randy Lamdin (USEPA) of a) WDEQ Permit to Construct (#97-134R), dated May 12, 1997, b) WDEQ memorandum, dated October 2, 1997, of a WDEQ inspection conducted on October 1, 1997, c) WDEQ memorandum, dated February 25, 1998, of a WDEQ inspection conducted on February 2, 1998 and d) WDEQ Permit to Construct (#98-063), dated April 2, 1998.
26. Email from Pete Ramirez (USFWS) to Roy Brown (USFWS) and Randy Lamdin (USEPA) with attached USGS National Wildlife Health Center, Diagnostic Services Case Report (Case #19617) necropsy reports (on five ducks), dated January 17, 2006.
27. Email from Roy Brown (USFWS) to Randy Lamdin (USEPA) and Pete Ramirez (USFWS) alluding to the latest USFWS retrieval of migratory bird mortalities (from November 12, 2005 incident) being six (6) vs the previously reported five (5).

(Documents above marked * are designated privileged and confidential.)

CERTIFICATE OF SERVICE

Docket No. RCRA-08-2006-0003

Respondents: BP America Production Company; and BP America Inc.

I hereby certify that the original and a true copy of the attached Administrative Order Pursuant to Section 7003 of RCRA was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent by Certified Mail, Return Receipt Requested, to:

C. Jack Engstrom
Field Environmental Coordinator
BP America Production Company
P.O. Box 157
Wamsutter, WY 82336

Gary (Jerry) Austin
Manager
Wamsutter Operations Center
BP America
P.O. Box 157
Wamsutter, Wyoming 82336

and

CT Corporation System
Agent for BP America Production Company
and BP America Inc.
1720 Carey Ave., Suite 200
Cheyenne, Wyoming 82001

Dated: 3/10/06

By: Dayle La Arid